

# ADVOCATES' EXAMINATION

## PAPER 2

### TRIAL COURT PROCEEDINGS, AND ALTERNATIVE DISPUTE RESOLUTION

#### Regulations 7(9)(b), 7(9)(d) and 7(9)(c)

6 APRIL 2022

14:00-15:15

Total: [50]

***Candidates are allowed 15 minutes to peruse the paper before starting to answer the questions. No candidate may start writing in the answerbook during this period. The examination of 1 hour then follows.***

1. Candidates must answer all the questions.
2. Candidates must remember that marks are awarded for good draftsmanship.
3. Please write only in pen on the right-hand pages, the left side (underside) must only be used for your own notes.
4. Except if a special reason exists, a candidate will not be required to do an oral if 50% or more is attained. If a candidate achieves a score from 40% and below 50% he/she will be required to do an oral. If a candidate achieves less than 40% he/she will not qualify for an oral and will have failed this section.
5. Admission papers 1 to 4 have orals for candidates who achieve a score from 40% and below 50%.
6. The legal writing and drafting paper (Paper 5) does not have any orals, candidates must achieve a minimum score of 50% to pass this paper.

**Trial Court Proceedings  
and Alternative dispute resolution  
Regulations 7(9)(b), 7(9)(d) and 7(9)(c)**

6 April 2022

**Read all the text below and answer all the relevant questions  
[TOTAL MARKS 50]**

**Answer all 10 questions**

1. Read the client's abridged statement and consider whether the pleading complies with Rule 18 (3) and 18 (4). Explain you answer meticulously. To amplify your answer, you may use examples of how you would plead the facts to comply with Rule 18 (4). [12]

**Abridged statement from the client**

I was driving my unlicensed VW Polo to a wedding reception last Saturday. At the M1 North Grayston Street offramp I stopped at the red traffic lights. Pedestrians were crossing in front of my vehicle. Suddenly, a large truck crashed into the back of my car. The truck driver was very apologetic. He said that although he was texting on his smartphone, actually his brakes had failed. He works for himself. He delivers beds for a living. I do not have insurance for my car. The damage to my car is severe. It is a write-off. And, it's a pain in the neck.

**The pleading to consider**

"1. ...

2. ...

3. ...

4. ...

5. The sole cause of the collision was the negligence of the Defendant who was negligent in one or more of the following respects:

- (a) he failed to keep a proper look-out;
- (b) he drove his vehicle at a speed which in the circumstances was excessive;
- (c) he drove his vehicle without any or any adequate regard for the presence of traffic in front of him;
- (d) he failed to apply his brakes timeously or at all;
- (e) he failed to avoid the said collision when, in the circumstances, he ought to have been able to do so."

**Extract from Rule 18 of the Uniform Rules of Court**

**18 Rules relating to Pleading generally**

- (3) Every pleading shall be divided into paragraphs (including sub-paragraphs) which shall be consecutively numbered and shall, as nearly as possible, each contain a distinct averment.
- (4) Every pleading shall contain a clear and concise statement of the material facts upon which the pleader relies for his claim, defence or answer to any pleading, as the case may be, with sufficient particularity to enable the opposite party to reply thereto.

2. ADR includes arbitration. What are the essential differences between arbitration and litigation? [2]
3. ADR includes arbitration. What are the essential similarities between arbitration and litigation? [2]
4. ADR includes mediation. What are the essential differences between mediation and both litigation and arbitration? [4]
5. Your client, the defendant, has made a without prejudice tender in terms of Rule 34 to settle the plaintiff's claim. The plaintiff did not accept the tender. During cross-examination of your client, plaintiff's counsel lost his/her temper and shouted at the defendant: *so, why if you deny liability to my client have you paid a tender to settle this matter?*  
  
Explain the consequences of this event on the adjudication of the matter from the perspectives of both the plaintiff and the defendant. [5]
6. What is the difference between direct evidence and circumstantial evidence? [5]
7. What is the purpose of discovery? [5]
8. Does eDiscovery change the purpose of discovery or its effectiveness? Explain your answer from the perspective of practicality. [3]
9. What are the essential differences you will emphasise to your client whether to adopt action or motion proceedings to deal with a breach of a contract, a divorce, an interdict (whether interim or permanent) and a review of an administrative decision taken by the Department of Finance? [8]
10. What is the parol evidence rule? [4]

**TOTAL: 50 marks**

**FINAL EXAM INSTRUCTION TO CONSIDER:**

Marks are not awarded in accordance with the length of your answer but in accordance with the insight you demonstrate in your answer.

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**- THE END -**

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